

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #11	CCRB Case #: 201908908	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/06/2019 8:26 AM	Location of Incident: Within the Astor Place subway station	Precinct: 09	18 Mo. SOL 4/6/2021	EO SOL 11/21/2021	
Date/Time CV Reported Sun, 10/06/2019 9:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/10/2019 11:04 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Christine Stclair	01983	932009	TB DT04

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Chelsea Cason	13060	956501	TB DT04
2. POM Alen Mariano	29304	944116	TB DT04
3. POF Estefany Rosario	25986	958023	TB DT04
4. POM Kevin Mcleod	00853	961937	009 PCT
5. POF Salina Ali	04979	960139	TB DT04
6. POM Haifeng Lai	31104	952960	TB DT04
7. POF Guerline Cadet	29471	937620	TB DT04
8. POM Kenneth Taylor	14733	964312	009 PCT
9. SGT Kwame Pascal	00893	947325	I.A.B.

Officer(s)	Allegation	Investigator Recommendation
A.SGT Christine Stclair	Force: Sergeant Christine St. Claire used a conducted electrical weapon against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On October 6, 2019, complainant/witness § 87(2)(b) filed this complaint on behalf of § 87(2)(b) with IAB via phone, and IAB Log number 19-36835 was generated. On October 10, 2019, the CCRB received this case under IAB Log number 2019-37003.

On October 6, 2020, at approximately 8:26 a.m. § 87(2)(b) was sleeping inside of the 6-train station at Astor Place in Manhattan. PO Chelsea Cason and PO Alen Mariano, both of Transit Bureau District 4 woke up § 87(2)(b) who immediately told them that he wanted them to die, and that he would get someone in the CIA to kill them. § 87(2)(b) sat on a bench as PO Cason called for at least one additional unit. Sgt. Christine St. Claire and PO Estefany Rosario, both of Transit Bureau District 4 arrived. Sgt. St. Claire discharged her Taser three times in cartridge mode in succession on § 87(2)(b)'s torso (**Allegation A- Force-** § 87(2)(g) § 87(4-b), § 87(2)(g)

§ 87(2)(b) was removed to § 87(2)(b) for a psychological evaluation and for the removal of the Taser prongs. He was issued a summons for being “outstretched” which violates MTA Rules of Conduct 1050.7 (Board Review 01).

§ 87(2)(g)

The investigation received body-worn camera (BWC) videos from PO Cason, PO Mariano, and PO Rosario for this incident (Board Reviews 02 03, and 04).

On October 11, 2019, William Robinson of MTA Legal confirmed that there are no surveillance cameras at the Astor Place station (Board Review 18).

Findings and Recommendations

Allegation (A) Force: Sergeant Christine St. Claire used a conducted electrical weapon against § 87(2)(b)

Footage from PO Cason's, PO Mariano's and PO Rosario's body-worn cameras that after PO Mariano and PO Cason woke § 87(2)(b) on the southbound platform of Astor Place, he threatened them by saying that he would get his relative, who works for the CIA, to “blow” their “brains” out. PO Cason first told him to board a passing subway train, but PO Mariano stated that he needed to go to the hospital and told him to wait on the platform. He sat on a bench while PO Cason called for an additional unit to arrive (Board Review 02, timestamps 00:01:34-00:11:00 in the video player; Board Review 03, timestamps 00:01:35-00:11:00 in the video player). In this time, PO Mariano says to PO Cason, “Cason, I think we're gonna need ESU” (Board Review 03, timestamps 00:07:50 to 00:08:10 in the video player).

Sgt. St. Claire and PO Rosario arrived on scene. Sgt. St. Claire informed § 87(2)(b) that he was going to go to the hospital. § 87(2)(b) asked Sgt. St. Claire why. She asked him twice if he was going to “comply.” § 87(2)(b) responded by asking why he was going to the hospital, and as he did so, shook his hands up and down at waist level (Board Review 02, timestamps 00:11:00-00:11:40) in the video player; Board Review 03, timestamps 00:10:50-00:11:40 in the video player; Board Review 05, timestamps in the video player). Sgt. St. Claire said, “If you can't, I have to Tase you.” She asked PO Mariano if he had his video on (Board Review 03, timestamps 00:11:40-00:11:44 in the video player).

Sgt. St. Claire then discharged her Taser on § 87(2)(b) and struck him in the torso with the prongs. She discharged the Taser within one minute of arriving on scene. § 87(2)(b) groaned and moved his hand towards his torso, as officers told him to put his hands behind his back. He was taken to the ground facedown (Board Review 02, timestamps 00:11:00-00:13:00 in the video player; Board Review 03, timestamp 00:11:00-00:13:00 in the video player; Board Review 04, timestamps 00:01:20-00:03:00 in the video player).

§ 87(2)(b) provided a phone statement to the CCRB but did not appear for an in-person interview (Board Review 06). At the time of the incident, § 87(2)(b) was on the northbound

platform of the station. § 87(2)(b) was already speaking with PO Cason and PO Mariano at the time. They were telling him to move. § 87(2)(b) was rocking back and forth and sitting on his hands. He was asking the officers why he had to move, telling them “You don’t know who I am,” and calling one of them a “bitch.” The incident did not appear to escalate while only PO Cason and PO Mariano were on scene. Sgt. St. Claire arrived on scene and pulled out her Taser. § 87(2)(b) asked Sgt. St. Claire why she was going to use the Taser on him. Sgt. St. Claire used the Taser on § 87(2)(b) a number of officers surrounded him, and he was then face down on the ground. § 87(2)(b) was then taken to the hospital (Board Review 05).

The investigation could not reach § 87(2)(b) despite multiple contact attempts by mail, and phone. The New York City Department of Homeless Services could not provide any contact information for § 87(2)(b) (Board Review 06).

Sgt. St. Claire testified that she came to Astor Place in response to a call for an emotionally disturbed person, a call that required her response. When she arrived, she found § 87(2)(b) a 6’ tall, 300-pound male individual screaming and cursing at the officers. He told them that he wanted them dead, and that he wanted to harm them. He sat at a bench in the center of the platform. He held his fists clenched at his sides. This action made Sgt. St. Claire fear that he would push one of the officers onto the tracks. Sgt. St. Claire told him that he needed to go to the hospital, and she pulled out her Taser. He continued to yell in response to these actions. She did not remember giving him any orders to do anything specific. She did not know his prior history with officers (Board Review 07).

Sgt. St. Claire worried that if she delayed taking action, then § 87(2)(b) would push one of the other officers onto the tracks. She remembered him moving his upper body up and out at the officers. She came within five to seven feet of him and told him that she did not want to Taser him. He appeared to become more agitated, and she feared that based on his demeanor and how he was moving, that he would lunge. She discharged the Taser the first time, hitting him below the chest (Board Review 07).

After Sgt. St. Claire discharged the Taser for the first time, § 87(2)(b) continued to yell and curse and clench his hands. Sgt. St. Claire, surprised that he continued to yell and clench his hands, discharged the Taser again. She noted that he was disheveled and believed that he may have had a layer of clothing on under his thick hoodie that prevented the darts from latching on. She discharged the Taser a second time for a full cycle. Officers guided § 87(2)(b) to the ground, but he did not place his hands behind his back. At that point, the officers told him to give them his hands, but he did not do so. Sgt. St. Claire then discharged the Taser a third time, for a partial cycle while the officers brought his hands behind his back (Board Review 07).

During her interview, Sgt. St. Claire viewed footage from PO Cason’s BWC, and confirmed that it correlated with what she remembered from the incident. She did not want to change any part of her testimony after watching the video (Board Review 07).

PO Cason testified that when she and PO Mariano arrived at Astor Place to remove the homeless individuals sleeping there, PO Mariano immediately identified § 87(2)(b) and said that he had a violent history. As soon as PO Cason and PO Mariano woke him up, he immediately became upset. He told PO Mariano in a loud and angry tone that he would kill him. PO Mariano decided at that point that § 87(2)(b) needed to go to the hospital. PO Cason told him not to get onto an arriving train, and he complied, sitting on a bench. He did not get off the bench and approach the officers at any point, but he continued to threaten them. When Sgt. St. Claire arrived, she told him several times that he was going to have to leave in handcuffs. PO Cason did not remember § 87(2)(b)’s response, but he was angry. PO Cason did not remember if Sgt. St. Claire told § 87(2)(b) to do anything specific before discharging the Taser. She discharged it for at least one full cycle, striking § 87(2)(b) in the torso with both prongs from six feet away. After she did so, § 87(2)(b) fell to the ground right away when the Taser was first discharged. After the single Taser discharge, Sgt. St. Claire did not appear to have difficulty taking him to the ground (Board Review 08).

PO Mariano confirmed that he told PO Cason that he recognized § 87(2)(b) with whom he had several prior experiences. During one of these encounters, § 87(2)(b) lifted and threw PO Mariano, who stands 6'2" tall and weighs 200 pounds. He did not remember much about the initial interaction with § 87(2)(b)—he did not remember any specific threats made against him—but remembered that he was not initially compliant. He or PO Cason called an additional unit because he believed that they would need other officers to get § 87(2)(b) into custody. When Sgt. St. Claire and another unit arrived, he did not remember her giving § 87(2)(b) any orders before discharging the Taser. He did not remember whether § 87(2)(b) was sitting or standing or moving while the Taser was being discharged. He did not remember whether § 87(2)(b) was fighting through the Taser, nor how many times the Taser was discharged (Board Review 09).

PO Rosario, Sgt. St. Claire's operator, did not remember the circumstances under which the police were called. When she arrived on the scene, she remembered § 87(2)(b) as an individual permanently banned from Grand Central station, and that she had once convinced him to leave a location their good rapport. In the five-minute conversation the officers had with § 87(2)(b) after she arrived, she tried to invoke that rapport by using his nickname, "§ 87(2)(b)," while Sgt. St. Claire told him several times to put his hands behind his back. At the time, he appeared to be rising slightly out of the bench he was sitting on, leading PO Rosario to believe that he may have been trying to push one of the officers onto the track. When Sgt. St. Claire discharged the Taser, PO Rosario did not know where the darts hit him, but he did not go to the ground. When Sgt. St. Claire discharged the Taser for the second time, § 87(2)(b) went to the ground.

After viewing the video, PO Rosario explained the discrepancy between her initial statement and the video (§ 87(2)(b) putting his hand to his chest after the initial Taser discharge as opposed to staying in the raised position she described) by saying that she had had a different perspective on the incident than the one shown in the video (Board Review 10).

Threat, Resistance, and Injury Report § 87(2)(b) listed § 87(2)(b) as a 6'2" tall, 250-pound, § 87(2)(b) man and Sgt. St. Claire as a 5'6" tall, 180-pound, § 87(2)(b) woman. The only "force against MOS" noted was "menacing," and the only force used against § 87(2)(b) as a conducted electrical weapon. The reasons for using force were "defense of self," "defense of other MOS," and "overcome resistance/aggression." This document also noted that the darts penetrated § 87(2)(b)'s skin, that they did not miss, and that the Taser was "effective." It stated both that he stopped and continued resisting, and that he fell to the ground after the Taser was used. It also stated that he "fought through" the Taser, contributing to its ineffectiveness. § 87(2)(b) was brought to § 87(2)(b) for evaluation and removal of the prongs (Board Review 01).

§ 87(2)(g)

§ 87(2)(b)

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Patrol Guide Procedure 221-02 regulates the use of force. It defines "de-escalation" as "taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources become available...to reduce or eliminate the necessity to use force" (Board Review 19). It further directs the supervisor on scene to "coordinate the use of de-escalation techniques" (Board Review 19).

Patrol Guide Procedure 221-08 governs the use of conducted electrical weapons, and states, "the CEW is a significant intermediate use of force option" to be used only against "persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present." The Patrol Guide further narrows "active aggression" as a threat or assault "coupled with the present ability to carry out the threat or assault."

In deciding whether to use a Taser, officers should consider the following factors: the

severity of the circumstances, actions taken by the subject, immediacy of the perceived threat to the subject, members of service, or bystanders, whether the subject is resisting custody, whether the subject is trying to evade arrest by flight, number of subjects in comparison to the number of officers, size, age and condition in comparison to the officers, presence of hostile crowd or agitators, and the subject being under the influence of a substance that would likely increase pain tolerance (Board Review 11).

With respect to multiple CEW cycles, Patrol Guide Procedure 221-08 stipulates that “members should use the CEW for one cycle while constantly assessing if multiple cycles are necessary...all applications must be independently justifiable.” It also states, “It is strictly prohibited to use the CEW...on persons who passively resist (e.g. going limp, offering no active resistance)” (Board Review 11).

§ 87(2)(g)

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§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 13).
- This is the first CCRB complaint involving § 87(2)(b) (Board Review 14).
- Sgt. St. Claire has been a member of service for 18 years. Six prior CCRB complaints with eight allegations have been filed against her. None have been substantiated.

○ § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On November 30, 2020, a request for a notice of claim from the Office of the New York City Comptroller was returned with negative results (Board Review 15).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 11

Investigator: Miriam Lynch SI Miriam Lynch 12/14/20
Signature Print Title & Name Date

Squad Leader: Edwin Pena IM Edwin Pena 12/15/20
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date